

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR 5905
DATE COMPLAINT FILED: 3/07/2007
DATE OF NOTIFICATION: 3/14/2007
DATE OF LAST RESPONSE: 4/30/2007
DATE ACTIVATED: 7/06/2007

STATUTE OF LIMITATIONS: 7/31/2010 –
1/31/2012

COMPLAINANT:

Ikeita Cantú Hinojosa, former assistant treasurer of
National Association of Social Workers, Inc.
Political Action for Candidate Election

RESPONDENTS:

National Association of Social Workers, Inc.
National Association of Social Workers, Inc.
Political Action for Candidate Election
Jacqueline Steingold, PACE Treasurer
Elizabeth J. Clark, NASW Executive Director
Kathleen Waugh, NASW Chief Operating Officer
Carolyn I. Polowy, NASW General Counsel
Denise McKenzie, NASW Acting Controller

RELEVANT STATUTES:

2 U.S.C. § 432(b)(2)
2 U.S.C. § 433
2 U.S.C. § 434
11 C.F.R. § 102.6(c)(1)
11 C.F.R. § 102.6(c)(4)
11 C.F.R. § 102.8(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

Complainant, the former assistant treasurer of National Association of Social Workers, Inc. Political Action for Candidate Election ("PACE"), makes several allegations against her former employer. Specifically, the complaint alleges: (1) that National Association of Social Workers, Inc. ("NASW") may not be depositing member donations to PACE within 30 days of receipt; (2) that NASW is using PACE contributions for administrative overhead and to help pay NASW pension costs; (3) that PACE is not timely reporting its expenses; and (4) that NASW is billing PACE for inappropriate non-PACE expenses and overcharged PACE for administrative overhead. The respondents, through counsel, adequately rebut all of the allegations except one, admitting to four late transfers of political contributions from NASW to the PACE account. For the late transfer violations, the respondents request pre-probable cause conciliation.

As described more fully below, we recommend that the Commission find reason to believe that NASW violated 2 U.S.C. § 432(b)(2)(B) and 11 C.F.R. §§ 102.8(b) and 102.6(c)(4) by failing to timely forward to PACE contributions it received as a collecting agent and authorize a limited investigation to determine the amount of money at issue. We also recommend the Commission find reason to believe that PACE and Jacqueline Steingold, in her official capacity as Treasurer, violated 11 C.F.R. § 102.6(c)(1) by failing to ensure that transmittal requirements regarding contributions were met. We further recommend that the Commission find no reason to believe that PACE and Jacqueline Steingold, in her official capacity as Treasurer, violated 2 U.S.C. § 434(b) by failing to timely disclose expenditures. Although several NASW executives are listed as "respondents" in the complaint, no specific allegations are made with respect to any of them. Therefore, we recommend the Commission dismiss the complaint with respect to Elizabeth J. Clark, NASW Executive Director; Kathleen Waugh, NASW Chief

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1 Operating Officer; Carolyn I. Polowy, NASW General Counsel; and Denise McKenzie, NASW
2 Acting Controller and close the file as to these individual respondents.¹

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 According to its website, the National Association of Social Workers is the largest
5 membership organization of professional social workers in the world with 150,000 members.
6 PACE was formed almost thirty years ago and is the political action arm of NASW. As a
7 political action committee, PACE endorses and financially contributes to candidates who support
8 NASW's policy agenda. PACE is funded almost entirely by member contributions and
9 reimburses NASW for virtually all PACE administrative expenses incurred on its behalf,
10 including its share of rent, staff salaries, benefits, and administrative overhead.

11 As Assistant Treasurer for PACE, the Complainant's job responsibilities included
12 keeping the PACE board informed regarding PACE's financial position and PACE political
13 activities. According to the complaint, the Complainant began having a number of accounting
14 questions regarding PACE in September 2006. One month later, the Complainant became a
15 whistleblower regarding her concerns to NASW auditors, a NASW Finance Committee member,
16 and the NASW President. To assess the Complainant's allegations, the respondents hired a
17 forensic accounting firm, Financial Corporate Legal Advisors, Int'l., Inc. (FCL Advisors), that
18 "reviewed and tested each of the allegations" in the complaint she filed with the Commission.
19 NASW Response at 2. FCL Advisors also "conducted a general, thorough analysis of NASW
20 and PACE financial data" for calendar year 2006. *Id.* In a Report signed by two CPAs, FCL

¹ The other allegations in the complaint, namely that NASW used PACE contributions to help pay for NASW administrative overhead and pension costs and that NASW overcharged PACE for administrative overhead, do not appear to state violations of the FECA and, therefore, we do not make recommendations as to them. Respondents nevertheless address these allegations in their response to the complaint and explain that external auditors found "that they reflect a lack of understanding of fundamental accounting concepts (e.g., cash versus accrual accounting), and that they are not substantiated upon a thorough examination of the underlying financial data." See FCL Advisors Report at 5.

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1 Advisors confirmed the late transfers of funds from NASW to PACE but found no evidence to
2 support the complainant's other allegations.² Attachment 1.

3 The Complainant alleged that NASW failed to forward contributions from members
4 intended for deposit into the PACE account. While NASW admits that there were four occasions
5 in which NASW failed to timely remit payments to PACE within the 30-day required period, all
6 money intended for PACE appears to have eventually been transferred to PACE.

7 A "collecting agent" is an organization or committee that collects and transmits
8 contributions to one or more separate segregated funds to which the collecting agent is related.
9 See 11 C.F.R. § 102.6(b)(1). A parent, subsidiary, branch, division, department, or local unit of
10 the connected organization or the separate segregated fund may act as collecting agent for the
11 separate segregated fund (SSF). See 11 C.F.R. § 102.6(b)(1)(ii). According to its filings with
12 the Commission, PACE holds itself out as the SSF of NASW and has listed NASW as its
13 connected organization. Thus, NASW appears to be an entity that may act as a collecting agent
14 for PACE. See *id.*

15 The Commission's regulations require collecting agents to follow certain procedures for
16 collecting and transmitting contributions for the SSF in order not to have their own reporting
17 requirements. For purposes of making transmittals of contributions received in forms other than
18 checks made payable to the separate segregated fund, the collecting agent must either: 1) set up a
19 transmittal account to be used solely for the deposit and transmittal of funds collected on behalf
20 of the separate segregated fund; 2) deposit such contributions into the agent's treasury account,
21 keeping separate records; or 3) deposit them into an account used only for state and local election
22 activity. See 11 C.F.R. § 102.6(c)(4)(ii). A collecting agent that follows these procedures is not

² The Respondents also provided several exhibits attempting to show a pattern by the complainant of making written accusations without substantial evidence or credible information to support her claims during her thirteen-month tenure at PACE.

1 required to register and report as a political committee provided that the organization does not
2 engage in activities such as making contributions or expenditures for the purpose of influencing
3 federal elections. See 11 C.F.R. § 102.6(b)(2).

4 As the collecting agent for PACE, NASW is required to forward contributions of \$50 or
5 less to the treasurer of PACE within 30 days of receipt. See 2 U.S.C. § 432(b)(2)(A) and
6 11 C.F.R. § 102.8(b)(1). In addition, NASW must forward contributions in excess of \$50 to the
7 treasurer of PACE within 10 days of receipt, along with the name and address of the contributor
8 and the date of receipt of the contribution. See 2 U.S.C. § 432(b)(2)(B) and 11 C.F.R.
9 § 102.8(b)(2). The respondents admit that on four occasions in 2005 and 2006, NASW failed to
10 timely remit payments to PACE within the 30-day required period. Specifically, the four late
11 transfers were: (1) June 2005 contributions transferred approximately 26 days late; (2) June 2006
12 contributions transferred approximately 15 days late; (3) July 2006 contributions transferred
13 approximately 30 days late; and (4) December 2006 contributions transferred approximately
14 14 days late. With respect to the December 2006 contributions, FCL Advisors stated that while
15 it determined this transfer to be "technically late, we noted that the check date was January 4,
16 2007 (timely); but because it was not timely mailed (due to a sick leave issue) we found that the
17 item is technically not a deposit in transit and thus should be considered a late deposit."
18 See Attachment 1 at 2-3.

19 It is not clear from either the complaint or response how much money is involved with
20 the four late transfers. However, the respondents indicate that the deadline missed in each
21 instance was 30 days, as opposed to the 10-day deadline for contributions in excess of \$50. This
22 information indicates that the amounts of the individual payments may be small, although the
23 aggregate number may be quite large.

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1 _____
2 _____ We recommend,
3 therefore, that the Commission find reason to believe that NASW violated 2 U.S.C.
4 § 432(b)(2)(B) and 11 C.F.R. §§ 102.8(b) and 102.6(c)(4) by failing to timely forward to PACE
5 contributions NASW received as a collecting agent. Because PACE is charged with ensuring
6 that transmittal requirements regarding contributions received by its collecting agent are met, we
7 further recommend that the Commission find reason to believe that PACE and Jacqueline
8 Steingold, in her official capacity as Treasurer, violated 11 C.F.R. § 102.6(c)(1).

9 We also recommend that the Commission find no reason to believe that PACE and
10 Jacqueline Steingold, in her official capacity as Treasurer, violated 2 U.S.C. § 434(b) by failing
11 to timely disclose expenditures. The complaint alleged that expenses paid for by NASW and
12 eventually reimbursed by PACE were expensed during one fiscal year but were not reported on
13 PACE's disclosure reports until the following fiscal year. At issue here are reoccurring,
14 administrative expenses incurred by PACE in May and June of 2006, for items such as rent,
15 postage, photocopying, administrative overhead, and courier services. These expenses were paid
16 for by NASW when they were incurred (in its efforts to establish, administer and financially
17 support a political committee), reimbursed by PACE to NASW in August 2006, and disclosed by
18 PACE in its September 2006 monthly disclosure report. A connected organization can legally
19 pay all administrative expenses incurred by a PAC, and the PAC has no legal obligation to
20 reimburse the connected organization for those expenses or disclose the payments made by the
21 connected organization for administrative expenses. See 11 C.F.R. §§ 100.6(a) and 114.5(b).
22 Therefore, if a PAC chooses to reimburse its connected organization for such expenses, such
23 reimbursement need not occur within any specified period of time, although the PAC must
24 timely disclose any disbursements it makes to reimburse the connected organization. Because it

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appears that PACE timely reported the disbursements that it made to reimburse NASW, there does not appear to be a violation of the Act.

The complaint named several NASW officers as "respondents." However, because there is no information suggesting a basis upon which any officers may be held personally liable, we recommend dismissal of the complaint with respect to Elizabeth J. Clark, NASW Executive Director; Kathleen Waugh, NASW Chief Operating Officer; Carolyn I. Polowy, NASW General Counsel; and Denise McKenzie, NASW Acting Controller, and closure of the file as to them.

III. RECOMMENDATIONS

1. Find reason to believe that the National Association of Social Workers, Inc. violated 2 U.S.C. § 432(b)(2)(B) and 11 C.F.R. §§ 102.6(c)(4) and 102.8(b) by failing to timely transmit contributions;

2. Find reason to believe that and National Association of Social Workers, Inc. Political Action for Candidate Election and Jacqueline Steingold, in her official capacity as Treasurer, violated 11 C.F.R. § 102.6(c)(1) by failing to ensure that the transmittal requirements regarding contributions were met;

3. Find no reason to believe that PACE and Jacqueline Steingold, in her official capacity as Treasurer, violated 2 U.S.C. § 434(b) by failing to timely disclose expenditures;

4. Dismiss the complaint with respect to Elizabeth J. Clark, NASW Executive Director; Kathleen Waugh, NASW Chief Operating Officer; Carolyn I. Polowy, NASW General Counsel; and Denise McKenzie, NASW Acting Controller and close the file as to them;

5. Approve the appropriate letters.

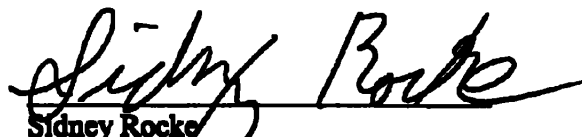
Thomasenia P. Duncan
General Counsel

Date

11/27/07

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